

1970

c 126 Dependants' Relief Act

Ontario

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CHAPTER 126

The Dependants' Relief Act

1. In this Act,

Interpre-
tation

- (a) "applicant" means a dependant making application for an allowance under this Act, or, in the case of a dependant who is a patient in a psychiatric facility under *The Mental Health Act* or who has been declared a mentally incompetent person, the Public Trustee or committee of such person, as the case may be, or, in the case of an infant, the Official Guardian, applying for an allowance under this Act on behalf of such patient in a psychiatric facility under *The Mental Health Act*, mentally incompetent person or infant, as the case may be; R.S.O. 1970,
c. 269
- (b) "dependant" means the wife or husband of a testator, the child of a testator under the age of sixteen years or the child of a testator over that age who through illness or infirmity is unable to earn a livelihood;
- (c) "executor" includes administrator with the will annexed;
- (d) "letters probate" includes letters of administration with the will annexed;
- (e) "testator" means a person who by deed or will or by any other instrument or act so disposes of real or personal property, or an interest therein, that the property or interest will pass at his death to some other person;
- (f) "will" means a deed, will, codicil, instrument or other act by which a testator so disposes of real or personal property that the property will pass at his death to some other person. R.S.O. 1960, c. 104, s. 1, *amended*.

2.—(1) Where it is made to appear to the judge of the surrogate court of the county or district in which a testator was domiciled at the time of death that the testator has by will so disposed of real or personal property that adequate provision has not been made for the future maintenance of his dependants or any of them, the judge may make an order charging the whole or any portion of the estate, in such proportion and in such manner as to him seems proper, with payment of an allowance sufficient to provide such maintenance. Order for
allowance
for main-
tenance

Form of
allowance

(2) The allowance may be by way of an amount payable annually or otherwise, or of a lump sum to be paid, or of certain property to be conveyed or assigned, either absolutely or for life or for a term of years, to the dependant by whom or on whose behalf the application is made, or for his use and benefit as the judge sees fit, and, in the event of a conveyance of property being ordered, the judge may give all necessary and proper directions for the execution of the conveyance or conveyances, either by the executor or by such other person as the judge directs, or may grant a vesting order. R.S.O. 1960, c. 104, s. 2.

Who may
apply
R.S.O. 1970,
c. 269

3. An application for an allowance may be made by a dependant, or, in the case of a dependant who is a patient in a psychiatric facility under *The Mental Health Act* or has been declared a mentally incompetent person, by the Public Trustee or committee, as the case may be, or, in the case of a dependant under the age of twenty-one years, by the Official Guardian or by a guardian appointed by the court. R.S.O. 1960, c. 104, s. 3, *amended*.

Procedure

4.—(1) An application for an allowance shall be made to the judge in chambers upon originating notice according to the practice of the court.

When
application
to be made

(2) Where letters probate have been or are applied for by the wife or husband of the testator or a guardian on behalf of minor dependants, an application for an allowance for such wife or husband or for such minor dependants shall be made at the time of applying for letters probate and in every other case the application shall be made within three months after the death of the testator, but the judge, if he considers it just, may allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application.

Distribution
of estate
postponed

(3) After service of notice of the application, the executors or trustees under the will shall not proceed with the distribution of the estate except so far as is necessary for the payment of debts and funeral and testamentary expenses and succession duty until the application is disposed of.

Removal
into
Supreme
Court

(4) At any time before the hearing of the application, a judge of the Supreme Court upon motion on behalf of the trustees or executors, or the applicant, or any other person interested, and upon being satisfied that the total value of the estate of the testator exceeds \$10,000, may by order direct that the application be heard by a judge of the Supreme Court and thereupon the matter shall be transferred into the Supreme Court and the application shall be heard by a judge of the Supreme Court who has the like powers and shall proceed in the like manner as in the case of a hearing and determination by the judge of the surrogate court. R.S.O. 1960, c. 104, s. 4 (1-4).

(5) Where a person by whom, or on whose behalf, an application for an allowance may be made under this Act is a patient in a psychiatric facility under *The Mental Health Act* at the time of the death of the testator or at any time before the application under this Act is heard and disposed of, notice of the application for letters probate shall be served upon the Public Trustee on behalf of such person, and the time within which the Public Trustee may make an application for an allowance under this Act runs from the date of the service of such notice.

Persons in institutions under R.S.O. 1970, c. 269

(6) Where a person interested in the estate in respect of which an application is made under this Act is a patient in a psychiatric facility under *The Mental Health Act*, notice of the application for an allowance shall in every case be served upon the Public Trustee who has the right to appear and be heard upon the application. R.S.O. 1960, c. 104, s. 4 (5, 6), *amended*.

Notice to Public Trustee

5. The judge shall not make any order until he is satisfied upon oath that all persons who are or may be interested in or affected by the order have been served with notice of the application as provided by the rules of court, and every such person is entitled to be present and to be heard in person or by counsel at the hearing. R.S.O. 1960, c. 104, s. 5.

Notice to parties before order

6. Except where inconsistent with this Act, the rules of evidence observed in and the practice and procedure of the surrogate court apply to proceedings under this Act. R.S.O. 1960, c. 104, s. 6.

Practice

7. The judge upon the hearing of the application shall inquire into and consider,

Matters to be considered by judge

- (a) the circumstances of the testator at the time of death;
- (b) the circumstances of the person on whose behalf the application is made;
- (c) the claims that any other person may have as a dependant of the testator;
- (d) any provision that the testator may have made during his lifetime for dependants or any dependant;
- (e) any services rendered by dependants to the testator;
- (f) any sum of money or any property provided by a dependant for the testator for the purpose of providing a home or assisting in a business or occupation or for maintenance or medical or hospital expenses; and
- (g) generally any matter that the judge thinks should be fairly taken into account in deciding upon the application. R.S.O. 1960, c. 104, s. 7, *amended*.

Payment
for services
rendered to
testator

8. Where the dependant has given personal assistance or a gift or loan of money or real or personal property towards the advancement of the testator in a business or occupation, the judge may in and by his order fix a value in money upon such assistance, or may fix the amount or value in money of any gift or loan so made, and may direct that the applicant rank as a creditor upon the estate therefor in the same manner and to the same extent as a judgment creditor upon a simple contract debt, but, except as to the amount so fixed as the value of such assistance or as the amount or value in money of such gift or loan, an allowance payable under this Act shall be postponed to the claims of creditors of the estate. R.S.O. 1960, c. 104, s. 8; 1962-63, c. 35, s. 1.

When widow
disqualified

9. No order shall be made under this Act in favour of a wife who was living apart from her husband at the time of his death under circumstances that would disentitle her to alimony. R.S.O. 1960, c. 104, s. 9.

Limit of
allowance

10. Subject to section 8, the amount or value of any allowance ordered to be paid, together with the value of any benefits given under the will of the testator, shall not exceed the amount to which the person in whose favour the order is made would have been entitled if the testator had died intestate. R.S.O. 1960, c. 104, s. 10.

Costs

11. The judge may direct that the costs of the application be paid out of the estate or otherwise as he thinks just, and may fix the amount of the costs payable by any party, exclusive of necessary disbursements, at a lump sum having regard to the value of the estate and the amount of any allowance applied for or directed by his order. R.S.O. 1960, c. 104, s. 11.

Appeal

12.—(1) A party or person taking part in the proceedings may appeal to the Court of Appeal from an order or decision made under this Act.

Persons
interested
may appeal

(2) Where the party or person having a right of appeal does not appeal from the order or decision, any person beneficially interested in the estate, by leave of a judge of the Court of Appeal, may appeal therefrom.

Persons
interested
may be
heard

(3) Any person beneficially interested in the estate, by leave of a judge of the Court of Appeal, may appear and be heard upon an appeal.

Manner and
time of
appeal

(4) Every appeal under this Act shall be made by notice of motion served upon all parties interested within thirty days after the date of the order or decision appealed from, and, when the circumstances of any case in the opinion of a judge of the Court of Appeal so warrant, he may permit service to be effected by registered mail.

(5) The time limited for appeal may be extended by a judge of the Court of Appeal, either before or after the expiry of the time limit. ^{Extension of time}

(6) The rules of court apply to such appeals. R.S.O. 1960, ^{Rules of court} c. 104, s. 12.

13. *The Judges' Orders Enforcement Act* applies to orders made under this Act. R.S.O. 1960, c. 104, s. 13. ^{Application of} R.S.O. 1970, c. 227
